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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,264	07/31/2003	Luis Rivera	TSR001/141985	5480
23444	7590	05/06/2005	EXAMINER	
ANDREWS & KURTH, L.L.P. 600 TRAVIS, SUITE 4200 HOUSTON, TX 77002			STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 05/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/632,264

Applicant(s)

RIVERA, LUIS

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the upper window track strip defining a downwardly facing edge receiving receptacle and the lower window track strip defining an upwardly facing edge receiving receptacle must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The drawings are objected to because the superfluous lettering and dimensions should be removed to avoid confusion. For example, see "structural panel" in figure 1 and the dimensions in figure 2. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

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corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The abstract of the disclosure is objected to because “to be upwardly and laterally for removal” on line 7 is grammatically awkward and confusing. Correction is required. See MPEP § 608.01(b).

Claim Objections

The claims are objected to because recitations such as “upper guide track structure” on line 5 of claim 1 require the article --an-- to be grammatically correct. Claim 8 is objected to because it ends with two periods. Appropriate correction is required.

Claim Rejections - 35 USC § 112

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “the lower edge portion” on line 4 of claim 1 render the claims indefinite because the lack antecedent basis. Recitations such as “a structural panel member” on line 4 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to one of the panel members set forth above or is attempting to

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set forth another panel member in addition to the one set forth above. Recitations such as "window guide tracks" on line 11 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to the window guide track structures set forth above or if the applicant is attempting to set forth another element of the invention in addition to the guide track structures set forth above. Recitations such as "overlapping relation" on line 12 of claim 1 render the claims indefinite because it is unclear element of the invention the window panels are overlapping. Recitations such as "said window panels defining a lower edge" on line 2 of claim 2 render the claims indefinite because it is unclear how two window panels can define the same lower edge. Recitations such as "the edges of the structural wall panels" on line 5 of claim 5 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of a window track assembly or the combination of a window track assembly and structural wall panels. The preamble of claim 1 implies the subcombination while the positive recitation of the wall panels on line 5 of claim 5 implies the combination. Recitations such as "like" on line 2 of claim 6 render the claims indefinite because it is unclear what the applicant is attempting to set forth. How much like a hook must an element be before it can be referred to as hook like?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Strawsine. Strawsine discloses a window track assembly for attachment to structural wall panel members 26, 41 forming a window opening (not numbered, but shown in figure 1), comprising an upper window track strip 16 defining an downwardly facing edge receiving receptacle (not numbered, but defined by 38 and 32) for receiving the lower edge portion of a structural panel member 41; upper guide track structure 29 extending from said upper window track strip and defining a pair of spaced downwardly facing window slide track receptacles 36 and 37; a lower window track strip 17 defining an upwardly facing edge receiving receptacle (not numbered, but defined by 19 and 23) for receiving the upper edge portion of a structural wall panel member 26 therein; lower guide track structure 18, 19 extending from said lower window track strip and defining a pair of spaced upwardly facing window slide track receptacles 21 and 22; and a pair of window panels 13, 14 being located within respective window guide tracks and being disposed in overlapping relation, said window panels each being supported for sliding movement within respective window guide tracks and being maintained against contact with one another by said window guide tracks, a resilient member 19 extending along the length of the lower track member. With respect to claim 8, since the ends of the lower track strip include the window slide track receptacles and the window slide track receptacles are open, the ends of the lower track strip are open.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strawsine as applied to claims 1-4 and 8 above, and further in view of Gates. Gates discloses serrations 72 and 28 for attaching portions of a window frame together.

It would have been obvious to one of ordinary skill in art to provide Strawsine with serrations, as taught by Gates, to more securely attach the track assembly to the structural wall members.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strawsine as applied to claims 1-4 above, and further in view of Bakke. Bakke discloses a window track assembly 23 having openings 33 in the bottom of channels 26 and 27.

It would have been obvious to one of ordinary skill in the art to provide Strawsine with openings, as taught by Bakke, to prevent water from accumulating in the channels.

Claims 10-13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strawsine in view of Morinaga et al. Strawsine discloses a window track assembly for attachment to structural wall panel members 26, 41 forming a window opening (not numbered, but shown in figure 1), comprising an upper window track strip 16 defining an downwardly facing edge receiving receptacle (not numbered, but defined by 38 and

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32) for receiving the lower edge portion of a structural panel member 41; upper guide track structure 29 extending from said upper window track strip and defining a pair of spaced downwardly facing window slide track receptacles 36 and 37; a lower window track strip 17 defining an upwardly facing edge receiving receptacle (not numbered, but defined by 19 and 23) for receiving the upper edge portion of a structural wall panel member 26 therein; lower guide track structure 18, 19 extending from said lower window track strip and defining a pair of spaced upwardly facing window slide track receptacles 21 and 22; and a pair of window panels 13, 14 being located within respective window guide tracks and being disposed in overlapping relation, said window panels each being supported for sliding movement within respective window guide tracks and being maintained against contact with one another by said window guide tracks, a resilient member 19 extending along the length of the lower track member. Strawsine is silent concerning the track strips having parallel side walls.

However, Morinaga et al. discloses a window track assembly comprising track strips each having parallel side walls and a bottom wall.

It would have been obvious to one of ordinary skill in the art to provide Strawsine with parallel side walls, as taught by Morinaga et al., to more securely attach the window track assembly to the structural wall.

Claims 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Strawsine in view of Morinaga et al. as applied to claims 10-13 and 17 above, and

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further in view of Gates. Gates discloses serrations 72 and 28 for attaching portions of a window frame together.

It would have been obvious to one of ordinary skill in art to provide Strawsine, as modified above, with serrations, as taught by Gates, to more securely attach the track assembly to the structural wall members.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Strawsine in view of Morinagag et al. as applied to claims 10-13 and 17 above, and further in view of Bakke. Bakke discloses a window track assembly 23 having openings 33 in the bottom of channels 26 and 27.

It would have been obvious to one of ordinary skill in the art to provide Strawsine, as modified above, with openings, as taught by Bakke, to prevent water from accumulating in the channels.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kelly is cited for disclosing a window track assembly having serrations. Rust et al. is cited for disclosing a window track assembly comprising drainage holes. Fletcher, Melcher, Covington, Ralph, Goss Jr. et al. and Dixon are cited for disclosing a window track assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-

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272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Gregory J. Stambu", with a stylized flourish at the end.

Gregory J. Stambu
Primary Examiner
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May 2, 2005